

### **REMARKS**

Claims 1- 27 and 29 - 31 are pending and under consideration in the above-identified application and Claim 28 was previously withdrawn from consideration.

In the Office Action of August 21, 2009, Claims 1-10, 12-27 and 29-31 were rejected.

With this Amendment, Claims 1, 2, 6, 8, 11, 13, 15-16, 21-22, 24 and 29-31 are amended and Claims 3-5, 7 and 18 are cancelled.

**I. 35 U.S.C. § 102 Anticipation of Claims and 35 U.S.C. § 103 Obviousness rejection of Claims**

Claims 1-10, 12-26 and 29 – 31 were rejected under 35 U.S.C. § 102(b) as being anticipated by Agesen et al. (“Agesen”) (U.S. Patent Publication No. 2001/0044856 A1).

Claim 27 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Agesen in view of Hayward (U.S. Publication No. 2003/0187888).

In relevant part, each of the independent claims 1, 15 and 29 now recite applying a second pre emptive promotion policy which preempts a first promotion policy and delays the promotion of an object from a Young memory location to an Older memory location when the object is determined to have a high probability of becoming garbage within a predetermined time period.

This is clearly unlike Agesen which fails to disclose or even fairly suggest applying a second pre emptive promotion policy which preempts a first promotion policy and delays the promotion of an object from a Young memory location to an Older memory location when the object is determined to have a high probability of becoming garbage within a predetermined time period. Instead, Agesen discloses using object lifetime statistics to determine if an object should be allocated to a Young memory location or an Older memory location and using an overflow event as the trigger to implement the second promotion policy. See, U.S. Pat. Pub. No. 2001/0044856, Para. [0068] and [0087]. This cannot fairly be viewed as delaying the promotion of an object from a Young memory location to an Older memory location based on the probability an object will become garbage because Agesen merely examines the lifetime

statistics of the object to determine if the object should be promoted. See, U.S. Pat. Pub. No. 2001/0044856, Para. [0068] and [0087].

Hayward, similarly, fails to disclose or even fairly suggest applying a second pre emptive promotion policy which preempts a first promotion policy and delays the promotion of an object from a Young memory location to an Older memory location when the object is determined to have a high probability of becoming garbage within a predetermined time period. Instead, Hayward discloses checking all allocated memory locations in a device to determine if the memory location is required by an application and maintaining a list of the available memory locations. See, U.S. Pat. Pub. No. 2003/0187888, Para. [0043]-[0047]. This cannot fairly be said to be delaying the promotion of an object from a Young to an Old memory location based on the probability an object will become garbage because Hayward merely discloses maintaining a list of available memory locations. See, U.S. Pat. Pub. No. 2003/0187888, Para. [0043]-[0047].

Therefore, because Agesen, Hayward or any possible combination of them fails to disclose or even fairly suggest every feature of claims 1, 15 and 29, the rejection of claims 1, 15 and 29 cannot stand. Because claims 2, 6, 8-14, 16-17, 19-28 and 30-31 depend, either directly or indirectly from claims 1, 15 and 29, they are allowable for at least the same reasons.

## **II. Conclusion**

In view of the above amendments and remarks, Applicant submits that all claims are clearly allowable over the cited prior art, and respectfully requests early and favorable notification to that effect.

If the claims are not found to be in condition for allowance, the Examiner is requested to contact the undersigned to schedule an interview before the mailing of the Office Action. Any communication initiated by this paragraph should be deemed an Applicant initiated interview

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